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SUBJECT: UN CONVEYS ITS INTENTION TO PLAY A ROLE IN COUNTER  
PIRACY EFFORTS

REF: USUN 000648

¶1. (U) This is an action request, see paragraph 5 below.

¶2. (U) Summary: Ambassador DiCarlo and USUN legal advisers and UKUN Deputy Permanent Representative Philip Parham and UKUN's Deputy Legal Adviser met with the UN Legal Counsel Patricia O'Brien at her request on July 15 to discuss the UN's intention to play a more proactive role on issues concerning piracy off the coast of Somalia and in particular on pirate prosecutions. O'Brien said that she and the UN Secretary General (SYG) believe there is a perception that jurisdictional gaps in prosecuting pirates exist and that the UN wants to play a role in eliminating such gaps. While saying she was "taken aback" by the tone, she thanked the U.S. for its letter. Based on the letter and her understanding that the UK had similar views, she seemed to concede that OLA will abandon its idea to conclude framework agreements between the UN and countries in the region near Somalia on prosecuting and imprisoning pirates. O'Brien acknowledged the points the U.S. made in the letter and said that any future action the UN takes on such an initiative would be done in a collaborative and cooperative way. She made clear, however, that the SYG was determined that the UN would play an active role on piracy issues and asked for U.S. and U.K. ideas on ways the UN could play a role that adds value to what countries are already doing. O'Brien conveyed that she is considering a UN model bilateral transfer agreement and suggested OLA might want to draw on the U.K. and U.S. arrangements with Kenya as prototypes that the UN could use to help encourage additional similar agreements in the region. O'Brien said that she would appreciate feedback from the U.S. and the U.K. on these and any other ideas for a UN role by the first week in August after which she would like legal experts from OLA, the U.S. and the U.K. to meet. End Summary.

¶3. (U) Parham told O'Brien that the UN is already playing a significant capacity building role via UNODC and the IMO. He also said that he was unaware of any significant jurisdictional gaps and that as piracy is a crime over which states have universal jurisdiction there should be no bar to domestic jurisdiction. Noting that the U.S. and the U.K. already have bilateral agreements with Kenya, Parham said that Turkey and Canada were close to finalizing agreements as well. Parham provided a letter to O'Brien from the UK's legal adviser that, similar to the U.S. letter, essentially concludes that the UN's idea for a framework agreement does not serve a useful purpose. O'Brien reacted by saying that engagement by OLA and the SYG on the issue raises the visibility of what the UNODC and the IMO are already doing. She also said that there are a wide range of states that are not part of the Contact Group on piracy and that the UN needs to play a role to assist and engage these states. Ambassador DiCarlo shared Parham's view that the UN is playing a vital capacity building role and suggested that an open Security Council meeting on piracy might be held in the fall (perhaps in November under Austria's presidency) to heighten awareness of the contributions of the UN and the Contact Group. O'Brien agreed that such a Security Council meeting would

enhance information flow on the issue, but reiterated the need for the UN to play a role.

¶4. (U) O'Brien said that she thought the UN could play a broader role to enhance what states are already doing by facilitating model agreements (using the U.K. and U.S. agreements with Kenya as a basis) to help states enter into bilaterally. She said that the SYG's support of such agreements would encourage states to enter into them. As examples, O'Brien said that Tanzania and the Seychelles have the capacity to contribute. Parham said the U.K. has already shared its agreement with Kenya with other members of the Contact Group. O'Brien said that that was the first she had heard of this and that the UN in general was not informed on the work of the Contact Group. Both Ambassadors DiCarlo and Parham said that if communications gaps exist between the Contact Group and the UN, then an open Security Council briefing would be a way to eliminate such gaps.

¶5. (U) ACTION REQUEST: Please provide Department views on OLA's idea of a model bilateral agreement, as well as thoughts on what role the UN and especially OLA could usefully provide by July 31.

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